

§ 134.23

and identify the facts relied on in support of the Department of State position. If the answer is based on any alleged facts not already in the record of the proceeding the Department of State shall include with the answer either supporting affidavits or a request for further proceedings under § 134.26.

§ 134.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 134.26.

§ 134.24 Comments by other parties.

Any party to a proceeding other than the applicant and Department of State may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comment.

§ 134.25 Settlement.

The applicant and the Department of State may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Department of State counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 134.26 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Department of State counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further pro-

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ceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 134.27 Decision.

The adjudicative officer shall issue an initial decision on the application as promptly as possible after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Department of State position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against the Department of State and another agency, the decision shall allocate responsibility for payment of any award made between the Department of State and the other agency, and shall explain the reasons for the allocation made.

§ 134.28 Further Department of State review.

Either the applicant or Department of State counsel may seek review of the initial decision. If neither the applicant nor the Department of State counsel seeks review, the initial decision shall become a final decision of the Department of State 30 days after it is issued. If review is taken the Judicial Officer will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

§ 134.29 Judicial review.

Judicial review of final Department of State decisions on awards as may be sought as provided in 5 U.S.C. 504(c)(2).